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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,344	01/25/2002	Won Kyu Kim	1599-0212P	9311

2292 7590 09/20/2004
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EXAMINER

LEITH, PATRICIA A

ART UNIT PAPER NUMBER

1654

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,344

Applicant(s)

KIM ET AL.

Examiner

Patricia Leith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1 and 3-10 remain pending in the application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a previous Office Action.

Claim Rejections - 35 USC § 103

Claims 1 and 3-10 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 2002/0114873 A1).

Applicant's arguments were fully considered, but not found persuasive.

First, Applicant's argue that the Affidavit submitted 6/10/04 under 37 CFR 1.131 provides evidence that the Invention was made before Lee (US 2002/0114873 A1). This affidavit was fully considered by the Examiner. It is clear from the Korean patent application that the application was filed May 15, 2000, however, the patent application by Lee was filed in February of 2000. Therefore, the affidavit filed on 6/10/04 is not convincing to overcome the rejection.

The second argument by Applicants focuses on the contention that the ginseng of the Instant claims differs from the Siberian ginseng as disclosed by Lee. Applicant has provided web printouts that explain the characteristics of Siberian ginseng. However, there is nowhere in the claims, or the Instant specification which teaches that the ginseng of the Instant claims is not Siberian ginseng. Applicants state that 'ginseng' is actually from the 'ginsenosides' genus and not from the genus of *Acanthopanax* (of which, Siberian ginseng is a member). It is noted that 'ginsenosides' is not known as a genus of ginseng, but compounds intrinsic to species of ginseng absent evidence to the contrary. In any case, 'ginseng' comprises many forms of ginseng such as American ginseng, Korean ginseng and Siberian ginseng for example. Applicants have claimed 'ginseng' which is considered to be a ***broad recitation of any type of ginseng***. Because the term 'ginseng' is broad, it is deemed that the species of Siberian ginseng obviates the recitation of 'ginseng'.

No Claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia Leith

PATRICIA LEITH
PRIMARY EXAMINER

